

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:09-cr-242-01

v.

HONORABLE PAUL L. MALONEY

ERIC MICHAEL PENA,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Eric Michael Pena has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to drug quantity.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to drug quantity, and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10(c).

However, the defendant is not eligible for a sentence modification. Defendant was sentenced to 72 months on Counts 1, 2, 3, and 5, and to 60 months on Count 4, which is statutorily required to run consecutively to any other term of imprisonment imposed. After application of Amendment 782, the amended guideline range is 78 to 97 months. Absent an

appropriate motion by the government, U.S.S.G. § 1.B.1.10 does not permit the Court to go below the amended range. Therefore, Amendment 782 does not retroactively lower the defendant's sentencing guideline range. Accordingly,

IT IS HEREBY ORDERED that Defendant Eric Michael Pena's motion modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 35) is **DENIED**.

Date: November 3, 2015

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge